

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action Number 1:13-CV-12787-JCB

CELSO VAZ GABRIEL d/b/a
AURA VIDEO & ADVERTISING,

Plaintiff/Counter-Defendant,

v.

SUPERSTATION MEDIA, INC.,
JOAQUIM CAVAIGNAC, and
GLOBO INTERNATIONAL,

Defendants/Counter-Plaintiffs.

SUPERSTATION MEDIA, INC.,
and JOAQUIM CAVAIGNAC,

Third-Party Plaintiffs,

v.

PATRICIA VAZ GABRIEL,

Third-Party Defendant.

**DEFENDANTS AND COUNTER-PLAINTIFF'S, SUPERSTATION MEDIA, INC.
AND JOAQUIM CAVAIGNAC'S MOTION TO COMPEL NON-PARTIES
MITA LINO AND EDSON LINO'S COMPLIANCE WITH SUBPOENAS FOR
DEPOSITIONS AND REQUEST FOR ORDERS TO SHOW CAUSE
WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT**

Defendants and Counter-Plaintiffs, Superstation Media, Inc. and Joaquim Cavaignac (collectively referred to herein as "Defendants"), through their undersigned counsel, pursuant to Rule 45 of the Federal Rules of Civil Procedure, respectfully move this Court for an order compelling non-parties Mita Lino and Edson Lino's (collectively referred to herein as the "Linos") compliance with the Notice of Taking of Deposition of Mita Lino and Subpoena to

Testify at a Deposition in a Civil Proceeding to Mita Lino and Notice of Taking of Deposition of Edson Lino and Subpoena to Testify at a Deposition in a Civil Proceeding to Edson Lino (collectively referred to herein as the “Subpoenas”). Copies of the Subpoenas are attached hereto as Exhibit “A”. The Linos were served with the Subpoenas via Sheriff on July 9, 2014. *See Exhibit “B”.* Defendants also request orders to show cause why the Linos should not be held in contempt of court for their failure to comply with the Subpoenas, pursuant to FED. R. CIV. P. 45. In addition, Defendants move this Court to extend the deadline for fact discovery solely for the purposes of Defendants deposing (i) the Linos; (ii) Maximiliano de Paula; and (iii) Dalcio Silva, all of whom failed to appear for their depositions despite being under subpoena to do so.¹

By way of background, the Linos are third-parties with information relevant to Defendants’ claims and defenses in this matter. The Third-Party Defendant, Patricia Vaz Gabriel, disclosed Mr. Lino as a person with knowledge concerning this lawsuit in her supplemental answers to Defendants’ first set of interrogatories. Accordingly, Defendants noticed the Linos’ depositions for Wednesday, July 16, 2014. *See Exhibit A.*

On July 10, 2014, Mrs. Lino informed one of Defendants’ attorneys, Scott Regan, that she had no intention of complying with the subpoena directed to her and that, even if she did show up to her deposition, she would “plead the Fifth” and refuse to answer any questions. She also indicated that Mr. Lino would ignore his subpoena. Mr. Lino subsequently called and expressed to Attorney Regan his unwillingness to comply with the subpoena served upon him. Though Attorney Regan tried to work with the Linos to schedule a more convenient date and/or time certain for them to appear for their depositions, including appearing on separate days and/or

¹ Fact discovery is scheduled to close on Wednesday, July 30, 2014. On June 21, 2014, however, the Honorable Magistrate Judge Jennifer C. Boal granted Plaintiff’s Motion for Extension of Time to August 12, 2014 to Complete Discovery served upon Superstation Media, Inc. Defendants will promptly file separate motions to compel concerning the deposition subpoenas served upon Messrs. de Paula and Silva.

times, the Linos refused to engage in reasonable discourse about the same. Instead, the Linos took deliberate actions to make compliance with the Subpoenas impossible. This was made especially clear when, towards the end of the day on July 10th, Mr. Lino told Attorney Regan that the Linos “would not appear for their depositions on Wednesday or any other day,” or words to that effect. Mr. Lino then hung up on Attorney Regan.

Attorney Regan subsequently sent a letter to the Linos memorializing these conversations and informed them that a person who fails to comply with a subpoena without adequate excuse can be held in contempt of court. Attorney Regan gave the Linos another chance to contact his office prior to 5:00 p.m. on Monday, July 14, 2014 should they wish to reschedule the depositions to an agreeable date and time in the near future. *See Exhibit “C”.* The Linos did not contact Defendants’ counsel and failed to appear for their depositions. Certificates of Nonappearance for the Linos are attached hereto as Exhibit “D”. The Linos’ blatant refusal to comply with the Subpoenas has caused Defendants to incur unnecessary attorneys’ fees and other expenses.

WHEREFORE, Defendants respectfully move this Court to (i) enter an order compelling the Linos to provide deposition testimony at the undersigned counsel’s office in Northborough, Massachusetts, Monday through Friday, during normal business hours, (ii) enter an order to show cause why the Linos should not be held in contempt of Court for their failure to comply with the Subpoenas, (iii) extend the deadline for fact discovery solely for the purpose of Defendants deposing the Linos, Maximiliano de Paula and Dalcio Silva (who are addressed via separate motions), (iv) award attorney’s fees and costs in connection with this motion, (v) award \$300.00 to Defendants as reimbursement for obtaining Certificates of Nonappearance for the Linos, and (vi) for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

SUPERSTATION MEDIA, INC.
and JOAQUIM CAVAIGNAC,

/s/ Alexander R. Rodriguez

Alexander R. Rodriguez
Admitted *Pro Hac Vice*
Florida Bar No. 605271
/s/ Alvaro Francisco Areces
Alvaro Francisco Areces
Admitted *Pro Hac Vice*
Florida Bar No. 724017
ARECES RODRIGUEZ, P.A.
Suntrust International Center
1 S.E. 3rd Avenue, Suite 2920
Miami, FL 33131
Tel: (305) 530-0090
Fax: (305) 530-0099
arodriguez@areceslaw.com
fareces@areceslaw.com

/s/ Scott E. Regan

Shehzad S. Rajwani (BBO # 674442)
Scott E. Regan (BBO # 681986)
300 West Main Street, Building A, Unit 1
Northborough, Massachusetts 01532
Tel: (508) 393-9244
Fax: (508) 393-9245
srajwani@harborlaw.com
regan@harborlaw.com

July 30, 2014

CERTIFICATE OF CONFERENCE PURSUANT TO L.R. 37.1

I hereby certify that, counsel for Superstation and Mr. Cavaignac, Scott Regan, and counsel for Plaintiff and Counter-Defendant, Celso Vaz Gabriel d/b/a Aura Video & Advertising and Third Party Defendant, Patricia Vaz Gabriel, Seth Salinger, conferred by telephone on July 29, 2014 regarding the substance of this motion. Attorney Salinger indicated that his clients do not oppose the relief sought herein.

/s/ Scott E. Regan

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing. In addition, a paper copy of the foregoing document will be sent to Edson and Mita Lino on July 30, 2014, via first class mail, at International Optical, 311 Somerville Avenue, Somerville, MA 02143.

/s/ Scott E. Regan